

Draft CD in the **Federal Register** for public review. The document will also be placed at public libraries in the vicinity of the project area and distributed to the concerned resource agencies and the public who has provided comment on the Draft SEIS/SEIR. Revisions to the text made in the Final SEIS/SEIR are marked with underline and the deleted text is marked with ~~strikeout~~.

This Final SEIS/SEIR describes the affected resources and evaluates the potential impacts to those resources as a result of the Proposed Action and alternatives. The purpose of the Proposed Action is to dispose of up to 3.0 million cubic yards of dredge material required to complete the Channel Deepening Project and to beneficially reuse the dredge material within the Port of Los Angeles (Port).

(C) This announcement also serves as the Public Notice/Notice of Availability for the Section 404 Permit under the Clean Water Act (CWA). An application has been received for a Department of the Army permit for the activity described herein. The Corps is considering an application submitted by the LAHD for a permit, in accordance with Section 404 of the CWA, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, to complete dredging activities outside of the Federal Channel and placement of the dredge material in waters of the United States in the Port of Los Angeles and at designated ocean disposal sites (LA-2 and LA-3).

This SEIS/SEIR will be used by the Corps as part of their application review process. The Corps and the LAHD independently determined under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively, that there were potential significant environmental impacts associated with the proposed action, and an Environmental Impact Statement and Environmental Impact Report was required.

1. Authorization

By Water Resources Development Act of (WRDA) 2000, the Port of Los Angeles Channel Deepening Project was authorized for construction. The project is a continuation of the navigation channel optimization that began with the 1994 Deep Draft Navigation Improvement (DDNI) project.

2. Background

The proposed project area is located at the Port of Los Angeles, California. This SEIS/SEIR is a supplement to the

2000 SEIS/SEIR that was prepared for the Channel Deepening Project, which was a supplement to the 1998 Channel Deepening Project EIR and the 1992 Deep Draft Navigation Improvements Project EIS/EIR the modifications required to complete disposal of dredged material from the authorized project. This SEIS/SEIR addresses impacts associated with providing additional disposal capacity of approximately 3 mcy required to complete the Channel Deepening Project. Additional disposal capacity is required to complete the deepening of the navigation channel and berthing areas to -53 feet Mean Lower Low Water (MLLW) at container terminals along the deepened channel and the removal of dredge material that was temporarily used as surcharge at the Southwest Slip. This project meets a public need for safe and efficient commercial navigation.

3. Availability of the Final SEIS/SEIR and Draft CD

The Final SEIS/SEIR and the Draft CD for the Proposed Action are being distributed directly to agencies, organizations, and interested groups and persons for comment during the 30-day formal review period in accordance with Section 1506.10 of the Council on Environmental Quality NEPA Regulations and Section 176 of the Clean Air Act for CD, and Section 404 of Clean Water Act. During the 30-day public review period, which begins on April 17, 2009 and ends on May 17, 2009, the Final SEIS/SEIR is available for general public review at the following locations:

U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 915 Wilshire Blvd., 14th Floor, Los Angeles, CA 90053

Los Angeles Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro, CA 90731

Los Angeles Public Library, Central Branch, 630 West 5th Street, Los Angeles, CA 90071

Port of Los Angeles, Environmental Management Division, 425 South Palos Verdes Street, San Pedro, CA 90731

Los Angeles Public Library, Wilmington Branch, 1300 North Avalon Boulevard, Wilmington, CA 90744

Dated: April 1, 2009.

Thomas H. Magness,

Colonel, U.S. Army, District Commander.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice Concerning Nationwide Permit 46

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In response to a memorandum opinion issued on March 26, 2008, in litigation relating to Nationwide Permit (NWP) 46, the U.S. Army Corps of Engineers (Corps) is removing a sentence in the preamble that was published in the March 12, 2007, final notice for the reissuance of the Nationwide Permits and replacing that sentence and providing additional clarification. The preamble language at issue concerns when a pre-construction notification is required in connection with NWP 46, and we are soliciting comments on the removed sentence, the replacement sentences, and the additional clarification provided in this notice. The Corps is not proposing any changes to the terms and conditions of NWP 46.

DATES: Submit comments by May 15, 2009.

ADDRESSES: You may submit comments, identified by docket number COE-2009-0019, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2009-0019, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW-CO (David B. Olson), 441 G Street, NW., Washington, D.C. 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2009-0019. All comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov Web site is an anonymous access system, which means

we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202-761-4922 or by e-mail at david.b.olson@usace.army.mil.

SUPPLEMENTARY INFORMATION: In the March 12, 2007, issue of the **Federal Register** (72 FR 11092), the U.S. Army Corps of Engineers (Corps) issued Nationwide Permit (NWP) 46, a new NWP that authorizes discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. To be authorized by the NWP, the discharge cannot cause the loss of greater than one acre of waters of the United States. The terms and conditions of NWP 46 require pre-construction notification for all activities authorized by that NWP.

After NWP 46 was issued, the National Association of Home Builders filed a complaint in the United States District Court for the District of Columbia, making a facial challenge to the issuance of the NWP, claiming that it is beyond the authority granted to

Corps under Section 404 of the Clean Water Act. In a memorandum opinion issued on March 26, 2008, the Court denied the Corps' motion to dismiss the action on the grounds that the plaintiff lacks constitutional standing. In that opinion, the Court cited preamble language in the March 12, 2007, **Federal Register** notice that discussed the pre-construction notification requirements for NWP 46 (see 72 FR 11142, first column, first full paragraph, third sentence: "To ensure that this NWP is used only to authorize discharges into those types of ditches, and to ensure that those activities result in minimal adverse effects on the aquatic environment, we are requiring pre-construction notification for all activities.").

The reference to "all activities" in the sentence quoted in the preceding paragraph was intended to refer to, and in fact applies to, only those activities for which some person voluntarily elects to seek authorization under NWP 46, and to activities that qualify for authorization under NWP 46, because those activities satisfy all of the terms and conditions of NWP 46 (e.g., activities involving discharges of dredged or fill material to ditches meeting all of the criteria listed in the first paragraph of NWP 46). The pre-construction notification requirement in NWP 46 does not apply to any person who does not voluntarily elect to seek authorization under NWP 46, nor to any activity not satisfying all of the terms and conditions of NWP 46, nor to any ditch not meeting each of the four criteria listed in the first paragraph of NWP 46.

The purpose of today's notice is twofold: (1) To remove the sentence identified above that was published at 72 FR 11142 and replace it with new sentences that provide a more accurate explanation of the circumstances under which NWP 46 requires the submission of pre-construction notifications, and (2) to provide an opportunity for the interested public to submit comments on the replacement sentence and the additional clarification provided by this notice.

The new sentences that replace the removed sentence read as follows: "To ensure that this NWP authorizes only those activities that result in minimal adverse effects on the aquatic environment, we are requiring that persons who voluntarily choose to seek authorization under NWP 46 provide pre-construction notification prior to commencing the activity for which that person is seeking authorization, where the activity would satisfy all of the terms and conditions of NWP 46.

Nationwide permit 46, like every other Corps general permit, does not make, and does not imply, any sort of assertion of geographic jurisdiction over any aquatic area or over any category of aquatic areas, nor does it make or imply any sort of assertion of activity-based jurisdiction over any activity or category of activities." These replacement sentences are intended to avoid any inference that NWP 46 requires any person to submit a PCN unless that person is voluntarily seeking permit authorization under NWP 46, and believes that his proposed activity would satisfy all the terms and conditions of NWP 46.

If a project proponent believes that, for any reason, his proposed activities do not require authorization under CWA Section 404, he need not choose to seek authorization for his activities under NWP 46. Moreover, if a project proponent does not wish to voluntarily make use of an NWP, or if he believes that his proposed activity does not satisfy all terms and conditions of an NWP, any person who voluntarily wishes to obtain a Department of the Army permit authorization can apply for an individual permit or can make use of another applicable type of general permit, such as a regional general permit.

By its terms, NWP 46 authorizes discharges of dredged or fill material into non-tidal ditches that meet all of the following criteria: They are "(1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States." Authorization under NWP 46 is subject to a pre-construction notification requirement, as stated in the "Notification" paragraph of NWP 46: "The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)" (72 FR 11190). This pre-construction notification requirement applies only to those particular discharges of dredged or fill material, for which some person voluntarily elects to seek permit authorization under NWP 46, where those particular discharges of dredged or fill material would go into the specific category of non-tidal ditches identified in the text of the NWP itself, i.e., into ditches that meet each of the four criteria identified in NWP 46.

If a project proponent believes, for any reason, his proposed activities do not require authorization under the

CWA, or believes that NWP 46 does not apply to his or her particular proposed activity, and thus does not choose to voluntarily seek NWP 46 authorization for that activity, he or she is not required to submit an NWP 46 pre-construction notification to the appropriate Corps district office prior to commencing that activity. One reason why a landowner or other project proponent may choose not to make use of NWP 46, and thus may choose not to send in a pre-construction notification for NWP 46, could be that the project proponent believes that the ditch in question is not subject to CWA jurisdiction, or for any other reason believes that his proposed activities do not require authorization under CWA Section 404. In such a situation, there is nothing in NWP 46 that would require that project proponent to send in a pre-construction notification or to seek any form of CWA Section 404 permit authorization.

A person may desire to obtain a Corps Section 404 permit authorization, such as NWP 46, before discharging dredged or fill material into aquatic areas that may arguably be jurisdictional waters of the United States to avoid a citizens lawsuit seeking to enjoin his proposed activities, and/or avoid civil penalties. A citizens lawsuit challenging unpermitted discharges of dredged or fill material would be based on the application of the relevant Federal statutes and regulations relating to jurisdiction, and would not be based on or affected in any way by the terms or conditions of any NWP or other general permit, including NWP 46. A landowner or other person can voluntarily choose to avail himself of the legal protection from a possible citizens lawsuit that a permit authorization under NWP 46 can provide. If so, that person has the right to make use of NWP 46 if he voluntarily chooses to use it, and if his proposed activity meets all the terms and conditions of that NWP.

For any sort of water body that is subject to the geographic jurisdiction of the CWA, and for any proposed activity that would constitute or involve the discharge of dredged or fill material into that jurisdictional water body, said geographic or activity-based jurisdiction is derived from the relevant statute (e.g., the CWA) and its implementing regulations that specifically address jurisdiction. No NWP or any other form of general permit asserts jurisdiction in any way, either explicitly or by implication.

It follows from the principles explained above that the issuance of NWP 46 did not and does not involve, and does not result in, any assertion of

Clean Water Act jurisdiction over any particular aquatic area or over any category of aquatic habitats, or over any particular activity or over any category of activities. Instead, issuance of NWP 46 or any other NWP is merely one means of providing permit authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, if a landowner or other person voluntarily elects to make use of that form of permit authorization, whatever his reason for doing so may be.

Dated: April 9, 2009. Approved by:

Steven L. Stockton,

Director of Civil Works.

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DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974 or send an e-mail to oir_submission@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these

requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 9,000.

Abstract: This application package invites small business concerns to submit a Phase I application for the Small Business Innovation Research (SBIR) Program (CFDA 84.133). This is in response to Public Law 106-554, the "Small Business Reauthorization Act of 2000, H.R. 5667" (the "Act") enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED) to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3978. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department